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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Telecommunications Services)
Inside Wiring)
)
Customer Premises Equipment)
)
In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992:)
)
Cable Home Wiring)

CS Docket No. 95-184

MM Docket No. 92-260

**OPPOSITION OF
RCN TELECOM SERVICES, INC. TO
PETITIONS FOR RECONSIDERATION**

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Dated: January 15, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
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**OPPOSITION OF
RCN TELECOM SERVICES, INC. TO
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Pursuant to subsection 1.429(f) of the Commission's rules,¹ RCN Telecom Services, Inc. ("RCN"), by its undersigned counsel, hereby submits this Opposition to Petitions for Reconsideration of the Report and Order ("Opposition") in the above-captioned proceeding.²

RCN confines this brief Opposition to three specific issues raised in the Petitions for Reconsideration filed by Time Warner Cable ("Time Warner") or the National Cable Television

¹ 47 C.F.R. § 1.429(f).

² *Report and Order and Second Further Notice of Proposed Rulemaking*, In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment, CS Docket No. 95-184; In the Matter of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, FCC 97-376 (released October 17, 1997 ("Report and Order" or "Second Further Notice").

Association (“NCTA”). First, both Time Warner and NCTA assert that franchised cable operators in states with mandatory access statutes enjoy an absolute right to own and control wiring inside multiple dwelling unit buildings (“MDUs”), even after the cable operator’s contractual right to use the wiring to serve subscribers within the MDU has expired and even over an MDU manager’s objections.³ Time Warner and NCTA contend that the Commission’s new inside wiring procedures for transferring service among providers never should apply in mandatory access states. These cable interests thus petition for reconsideration of the Commission’s new regulation setting forth the presumption that the inside wiring procedures “shall apply unless and until the incumbent providers obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.”⁴ RCN, on the other hand, endorses the Commission’s approach because in no state with a mandatory access statute has the highest court construed such a statute as granting cable operators an absolute right to keep unused home run wiring in place nor, to the best of RCN’s knowledge, has that issue ever been actually decided by any court.

As the Commission correctly noted in the Report and Order, the question of a cable operator’s right to maintain control over unused inside wiring is far from clear and is better left for decision by the state courts: “The enforceability of a state mandatory access statute is an issue for the state courts to decide under their particular statutes.”⁵ In the absence of a dispositive

³ Time Warner Petition for Reconsideration at 2-5; NCTA Petition for Reconsideration at 2-4.

⁴ *Id.*; 47 C.F.R. § 76.804(c).

⁵ Report and Order at ¶ 79.

decision by a state's highest court, the incumbent service provide should carry the burden of securing a judicial declaration that the state's mandatory access statute grants the incumbent an absolute right to keep unused wiring in place, even when such use is blocking the introduction of a competing service. If there is merit to a cable operator's claim, then the operator and its attorneys should have no difficulty in persuading a court to agree with them within the prescribed forty-five (45) days period. RCN urges the Commission to maintain this well-reasoned approach because it will foster competition for subscribers within MDUs while clarifying any rights to inside wiring that incumbent service providers may hold.

Second, RCN urges the Commission to reject Time Warner's request that open video system ("OVS") providers not be protected by the new inside wiring procedures.⁶ The fundamental premise of the new regulations is that an incumbent multichannel video programming distributor ("MVPD") has no right to maintain unused home runs in place at the MDU and that uncertainty with respect to this right serves to impede competition for subscribers residing within MDUs.⁷ RCN believes that it should make no difference whether an OVS provider fulfills its wiring obligations installing duplicative wiring inside an MDU or by using the existing wiring to which the incumbent provider no longer has a right. Time Warner attempts to read a requirement into the Commission's OVS rules where one does not exist.

Finally, the Commission should deny Time Warner's request that subscribers can appoint

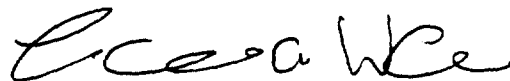
⁶ Time Warner Petition for Reconsideration at 21-22.

⁷ Report and Order at ¶ 38.

only an agent approved by the incumbent cable company to switch service providers.⁸ The practice of subscribers appointing alternative MVPDs as their agent for service transfers is well established. Subscribers in many markets, including New York City, have taken advantage of this convenience for many years. Time Warner offers no evidence of any kind of widespread or intentional "slamming." Allowing a subscriber to rely on the alternative provider facilitates the service transfer by allowing the respective service providers to directly coordinate the process. No benefits to the subscriber would be added by adopting Time Warner's suggestion. Rather, forcing the subscriber to give personal written consent to the service transfer would raise yet another roadblock to competition by giving the incumbent cable operator the ability to reject an agent as it sees fit and to unduly delay the implementation of the subscriber's wishes.

Accordingly, RCN urges the Commission to deny reconsideration of the issues as described above.

Respectfully submitted,



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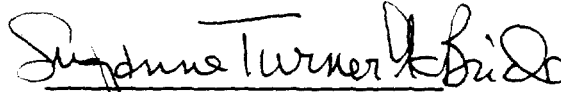
Dated: January 15, 1998

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⁸ Time Warner Petition for Reconsideration at 22-24.

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the Opposition of RCN Telecom Services, Inc. to Petitions for Reconsideration has been served on the parties below, via first class mail, postage prepaid, on this 15th day of January, 1998.


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